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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1100)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I call the meeting to order, ladies and gentlemen.

Thank you for joining us. This is meeting 12 of the Standing Committee on Justice and Human Rights. It's Tuesday, February 11, as we all know, and pursuant to the order of reference of Tuesday, November 5, 2013, in front of us this morning is Bill C-10, an act to amend the Criminal Code on trafficking in contraband tobacco.

Joining us as a witness for the clause-by-clause study which we are going to do is Mr. Paul Saint-Denis, senior counsel for the criminal law policy section. Mr. Saint-Denis, thank you very much for coming.

We're going to do clause-by-clause consideration. It's not a very long bill, ladies and gentlemen; it has four clauses.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed, so I shall call clause 2.

(Clause 2 agreed to)

(On clause 3)

The Chair: We have amendments. Our first amendment, IND-1, is from the independent member, Madame Mourani. She was notified of today's meeting and is not here, so no one is here to move her motion. Just so you know, her motion is out of order as it is contrary to the principle of the bill. We will remove that one.

We'll go on to amendment NDP-1.

I would like Madame Boivin to introduce her amendment.

[Translation]

Ms. Françoise Boivin (Gatineau, NDP): Good morning, everyone.

I'll quickly read the amendment so that it is on the record:

That Bill C-10, in Clause 3, be amended by replacing lines 20 to 27 on page 2 with the following:

“a term of 90 days, unless the court is of the opinion that there are exceptional circumstances related to the offender that justify it deciding otherwise,

(ii) in the case of a third offence, to a minimum punishment of imprisonment for a term of 180 days, unless the court is of the opinion that there are exceptional circumstances related to the offender that justify it deciding otherwise, and

(iii) in the case of a fourth or subsequent offence, to a minimum punishment of imprisonment for a term of two years less a day, unless the court is of the opinion that there are exceptional circumstances related to the offender that justify it deciding otherwise; or”

I will present it briefly. I don't want to go on and on about it. I find only one aspect of the bill problematic.

Everyone around the table wants to do everything we can to control contraband tobacco, which is an incredibly serious problem. The witnesses we have heard from have been very clear about that.

However, I must point out a few problems. The First Nations representatives who appeared before the committee deplored the fact that they were not necessarily consulted and that the bill targets them more than others. This bothers me. We know that this will come back to us. The purpose of our committee work is to send the best possible bill to the House so that we can ensure that it meets its objective.

Of course, we heard about their aboriginal rights inherent to the production, transport, trade and sale of tobacco products, as well as the related regulations. I don't think I heard any First Nations representatives state that they were in favour of contraband tobacco. Let's be clear about that. The First Nations are not interested in contraband trafficking, either, or having it take place on their reserves or at their places of business.

We also heard about cultural practices. In fact, the heart of the debate was on the Government of Canada's approach. I won't speak about it again, but the fact that this bill will come into force on a date set by order will probably give the government an opportunity to sit down with some stakeholders that it did not have a chance to consult before the bill was introduced.

Furthermore, I have no problem with the fact that we are being tougher on repeat offenders. We know that mandatory minimum sentences are not illegal per se, even though they remove a discretionary power from the courts of justice. It is important to be clear about that. The Supreme Court and other tribunals share that opinion.

My only serious concern has to do with *R. v. Gladue*. The legislative summary of the bill contains the following quotation from the Ontario Court of Appeal:

[T]he existence of a minimum ... must, of necessity, limit the practical impact of s. 718.2(e) just as it limits the impact of other potentially mitigating factors particular to the individual offender.

In fact, section 718.2(e) of the Criminal Code compels the judge imposing the sentence to consider “all available sanctions other than imprisonment that are reasonable in the circumstances ... for all offenders, with particular attention to the circumstances of aboriginal offenders.”

In certain cases, legislation adopted by Parliament has been widely challenged before the courts. We must try to avoid that. The purpose of the bill is to stop or reduce the trafficking of contraband tobacco. We must ensure that it will be difficult to challenge the act.

That is the main reason for our amendment. It aims to make fully clear the penalty imposed for a re-offence; in this case, a minimum sentence would apply. Having said that, the court is permitted to apply the provisions set out in section 718.2(e) of the Criminal Code, should there be exceptional circumstances.

•(1105)

In this context, to be consistent with the rulings in *R. v. Gladue* and *R. v. Ipeelee*, I think it would be safer for the committee to warn, at the report stage, that sentences will be considerably increased. I did not think the way the government introduced its bill was unreasonable, considering the extent of contraband activities. The bill is adequate when it comes to that.

However, the fact that subsection 718.2(e) is in conflict with the proposed new wording of the Criminal Code may lead to challenges. I think it would be much safer to amend the bill accordingly. In addition, that would be more in line with the court rulings on the sentences often imposed on aboriginals guilty of such offences.

I am well aware that first nations are really unhappy with this bill, as they feel that they are its primary targets. I just want to remind you of something. One of the witnesses told us that we needed to

[English]

add money to first nations policing.

[Translation]

If we are serious about resolving this issue in a comprehensive way, we cannot pass this type of bill and, at the same time, reduce funding for police officers on reserves. We have to provide them with the tools they need. We also definitely need to provide financial assistance to ensure that young people are not drawn toward tobacco contraband. That is another aspect of the problem.

Here is the rationale behind the amendment proposed by the NDP. The amendment makes Bill C-10 more consistent with jurisprudence. That way, the government is less likely to be challenged in the near future. By doing this, we would maintain the bill's essential purpose of imposing harsher penalties for repeat offenders—for either second offences or subsequent offences.

•(1110)

The Chair: Thank you, Ms. Boivin.

[English]

Our next commenter on the amendment is Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): She answered the question in her further remarks so that's okay, Mr. Chair.

The Chair: Thank you very much.

Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Mr. Chair, I would like to thank Madame Boivin for her comments, for putting forward this amendment, and generally her support for Bill C-10.

Regrettably, we're unable to support this amendment. The reasons, Mr. Chair, are essentially because the intention of the motion is to make the mandatory minimum penalty of very little effect.

The government has striven to present a bill which will really gets at the root cause of this issue, which is the involvement of organized crime in the trafficking in very large quantities of contraband tobacco. You'll note that the mandatory minimum penalties in the offence itself really only apply to amounts that are very large, and that is 10,000 cigarettes or more than 10 kilograms of raw tobacco, which is a very large amount.

We heard from the first nations witnesses, police witnesses, and others about the impact of organized crime in this business, and the regrettable problems it brings to first nations communities when entities like Hells Angels and other well-known organized crime groups move in to really take advantage of first nation peoples in this business.

It's our view that we need to have a penalty which is significant so that organized crime will look very carefully at this and realize that if they're going to continue doing this business, they're going to face stiff penalties.

I also note that the mandatory minimum, unlike the case in many offences in the Criminal Code, comes into play only on a second conviction under this Criminal Code offence, not an excise tax offence, for example, and only when the conviction is proceeded with by way of indictment as opposed to summary conviction. These mandatory minimums are directed at very serious offences with very large amounts of contraband tobacco.

In our view, to introduce the possibility of something other than the mandatory minimum by giving the judge this additional discretion really would drive defence counsel representing organized crime accused to seek another sentence other than the mandatory minimum. That would defeat what we think is a very significant purpose of this legislation and this penalty.

I think for all of those reasons the government will be required to vote against this amendment, but we do thank Madame Boivin for presenting it.

Thank you.

The Chair: Thank you, sir.

Madame Boivin.

[Translation]

Ms. Françoise Boivin: I would like to use this opportunity to share my serious concern with Mr. Saint-Denis.

I understand the arguments raised. Organized crime has been part of the conversation. However, I cannot imagine exceptional circumstances related to an offender in a context of organized crime. In such a case, other offences would probably apply, as well.

Has the department looked into Bill C-10 as it relates to subsection 718.2(e) of the Criminal Code and the principles of the Gladue ruling? Is my concern justified?

What position could the Supreme Court of Canada adopt in a very specific context where, for instance, a young aboriginal on a reserve who has become involved in tobacco contraband ends up before the court, but has already been found guilty of an offence in the past? Some chiefs have been wondering whether the coming into force of Bill C-10 would have an impact on subsequent offences committed by aboriginals who had not pleaded guilty to past offences.

Have you analyzed the bill in light of the principles established in the Gladue ruling?

• (1115)

Mr. Paul Saint-Denis (Senior Counsel, Criminal Law Policy Section, Department of Justice): We have actually looked into that matter.

First, I should point out that this provision applies only to convictions for that specific offence. If an individual has already been convicted of a past offence under the Excise Act, 2001, the offence in question would not be punishable by the minimum sentence.

Second, we have noted that aboriginals were not especially involved in the traffic of tobacco, but rather in its production. So the offence we are discussing here is much less likely to affect them than those individuals involved in trafficking activities.

Third, as you noted, the Gladue ruling is an interpretation of provisions under subsection 718.2(e) of the Criminal Code. However, since those provisions were adopted by Parliament, I think that Parliament is free to change their interpretation.

This is not the first time minimum sentences have been proposed, as in Bill C-10. To my knowledge, the imposing of minimum penalties has never been challenged on the pretext that those penalties could have a negative impact on the interpretation made in the Gladue ruling.

Ms. Françoise Boivin: That has not been the case so far, but it could be.

Mr. Paul Saint-Denis: Conversely, it may not be.

Ms. Françoise Boivin: However, you are saying that you have analyzed the bill. According to what you said, the Department of Justice basically feels that Bill C-10 would have precedence and that subsection 718.2(e) would have no impact on the bill.

Mr. Paul Saint-Denis: That is what we think, Ms. Boivin.

[*English*]

The Chair: Thank you for those comments.

We'll go to the vote on amendment NDP-1 now.

(Amendment negated)

The Chair: We're still on clause 3. There is a third amendment that was introduced and deemed moved by Madame Mourani. Even though she's not here, it's still in order and on the table.

Does anyone wish to speak to the amendment?

Seeing no one, we'll vote on the amendment.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 3 agreed to)

(Clause 4 agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill to the House?

Some hon. members: Agreed.

The Chair: The bill was not amended so it doesn't need to be reprinted.

I will report that back to the House after question period tomorrow.

Thank you very much.

The meeting is adjourned.

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